

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOAN PORCO,

Plaintiff,

vs.

**1:20-CV-837
(TJM/TWD)**

**ANDREW M. SAUL, Commissioner of
Social Security,**

Defendant.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, which seeks a *writ of mandamus* from the Court directing the Defendant Commissioner of Social Security to release certain funds and take other action, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff contends that the Defendant Commissioner has unjustifiably delayed paying her additional Social Security benefits after the Social Security Appeals counsel determined that an Administrative Law Judge erred in calculating the amount of benefits to which she is entitled.

Magistrate Judge Dancks's Report-Recommendation, dkt. # 13, issued on February 22, 2021, recommends that the Court dismiss this matter for lack of subject matter jurisdiction. Judge Dancks finds that the Social Security Administration exercised

discretion in ordering the case remanded to an Administrative Law Judge to calculate benefits, that there exists no mere ministerial duty for the Commissioner to perform, and that the Court cannot issue a *writ of mandamus* under the circumstances. Because the conditions for mandamus do not exist, Judge Dancks finds, the Court lacks subject matter jurisdiction and must dismiss the case.

Plaintiff objected to the Report-Recommendation.¹ See dkt. # 14. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the other issues raised in the Petitioner's objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Dancks for the reasons stated in the Report-Recommendation.

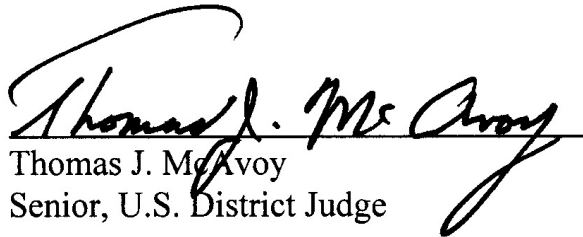
The Report-Recommendation of Magistrate Judge Dancks, dkt. # 13, is hereby **ACCEPTED** and **ADOPTED**. Plaintiff's objections to the Report-Recommendation are

¹On March 22, 2021, the Commissioner filed a "response" to the Plaintiff's objections. See dkt. # 15. That documents contains objections to the Magistrate Judge's conclusions. The Court will not consider that document. Judge Dancks's order clearly informs the parties that "FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW." The Commissioner did not seek an extension of time to object, and nothing in Judge Dancks's order permitted a response to another party's objections.

hereby **OVERRULED**. The petition for a *writ of mandamus* is hereby **DENIED AND DISMISSED**. The Clerk of Court is directed to **CLOSE** the case.

IT IS SO ORDERED.

Dated: March 24, 2021



Thomas J. McAvoy
Senior, U.S. District Judge